

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD J. BALCAREK, ROBERT L. BARTOSH,
ROBERT P. BISHOP, BRYAN J. DAGUE, DOUGLAS B. STROTT,
JOHN M. ARMACOST and STEVEN BERINGHAUSE

Appeal No. 95-4738
Application No. 08/146,868¹

ON BRIEF

Before LYDDANE, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2 and 4 through 13, which are all of the claims pending in this application.

We REVERSE.

¹ Application for patent filed November 2, 1993.

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BACKGROUND

The appellants' invention relates to a pressure sensor. Claim 1 is representative of the subject matter on appeal and a copy of claim 1, as it appears in the appellants' brief, is attached to this decision.

The prior art references of record relied upon by the examiner as evidence of obviousness under 35 U.S.C. § 103 are:

Park	4,425,799	Jan. 17, 1984
Park et al.	4,617,607	Oct. 14, 1986
Bishop	4,888,662	Dec. 19, 1989

Claims 1, 2, 4, 6, 8 and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bishop.

Claims 5, 7, 9 and 11 through 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bishop in view of Park and Park et al.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the § 103 rejections, we make reference to the examiner's answer (Paper No. 13, mailed

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May 12, 1995) for the examiner's complete reasoning in support of the rejections, and to the appellants' brief (Paper No. 12, filed April 17, 1995) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of independent claim 1 based on 35 U.S.C. § 103 as being unpatentable over Bishop. The issue presented by the examiner and the appellants with respect to claim 1 is whether the limitation "an annular stop surface integrally formed as part of the bottom wall" is either (1) met by Bishop's back-up ring 33 on a bottom wall of can 3, or (2) would have been obvious to one of ordinary skill in the art at the time of appellants' invention.

Bishop teaches that the rigid back-up ring 33, preferably of polytetrafluoroethylene (Teflon™), is used to prevent the O-ring 9 from movement between the sensing element 7 and the metal can 3.² Thus, Bishop's back-up ring 33 is not integrally formed as part of the bottom wall of the can 3. Accordingly, the limitation the limitation "an annular stop surface integrally formed as part of the bottom wall" of claim 1 is not met by Bishop.

The examiner determined (answer, p. 5) that it would have been obvious to have integrally formed Bishop's back-up ring and bottom wall, such being a design choice. We do not agree. In this case, the appellants were well aware of the teachings of Bishop and stated that their invention provided a less expensive (both in material and assembly costs) alternative.³ Thus, this is not a case where the claimed difference solves no stated problem and would have been an obvious matter of design choice. See In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975). A rejection based on 35 U.S.C. § 103 must rest on a factual basis,

² See column 4, lines 3-6, of Bishop.

³ See page 2, line 3, to page 3, line 5, of the specification.

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and these facts must be interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968). Since the examiner has not provided any factual basis as to why one skilled in the art would have integrally formed Bishop's back-up ring 33 as part of the bottom wall of can 3, we will not sustain the rejection of independent claim 1 under 35 U.S.C. § 103. Likewise, we will not sustain the rejections of dependent claims 2 and 4 through 13 under 35 U.S.C. § 103.

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CONCLUSION

To summarize, the decision of the examiner to reject claims
1, 2 and 4 through 13 under 35 U.S.C. § 103 is reversed.

REVERSED

WILLIAM E. LYDDANE)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

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APPENDIX

1. A pressure sensor comprising:

a metallic housing having a bottom wall formed with a fluid pressure inlet in the bottom wall and having a sidewall extending upwardly from the bottom wall to a distal end,

a pressure sensing module having a pressure responsive surface communicating with the fluid pressure inlet and disposed within the housing closely adjacent the upwardly extending sidewall, the upwardly extending sidewall circumscribing the pressure sensing module,

an annular stop surface integrally formed as part of the bottom wall, the stop surface disposed a selected first distance above the remainder of the bottom wall, the pressure sensing module received on the stop surface,

a seal formed of resilient material received on the bottom wall contiguous to and inboard of the stop surface, the seal formed of resilient material having a height of a second distance greater than the first distance whereby compression of the seal by the pressure sensing module is limited by the stop surface,

the distal end of the upwardly extending sidewall being crimped inwardly to place a force on the pressure sensing module biasing the module against the stop surface, and

a connector attached to the housing to provide electrical connection to the pressure sensing module.

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APJ NASE

APJ McQUADE

APJ LYDDANE

DECISION: **REVERSED**

Prepared By: Delores A. Lowe

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1st Rev. 22 Aug 97

FINAL TYPED: